

ENTERED

AUG 11 2010

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CIRCUIT COURT
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

11737

THOMAS GLENN; and PATSY
McKINNEY,

Plaintiffs,

v.

CITY OF PORTLAND, a public body,

Defendant.

Case No.

1008-11737

COMPLAINT

(Negligence; Battery - Excessive Force;
False Arrest; False Imprisonment;
Trespass - Unlawful Entry)

PRAYER: \$150,000 - \$499,000

(CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION)

JURY TRIAL DEMANDED

Plaintiffs allege as follows:

1.

At all material times, defendant City of Portland was a municipality and public body located in Multnomah County, Oregon. At all material times, the Portland Police Bureau was a law enforcement agency operated by defendant City of Portland. At all material times, Douglas Matthews, Freddie Jackson and Kelly Van Blokland were police officers acting within the course and scope of their employment for the Portland Police Bureau and the City of Portland.

2.

At all material times, plaintiffs Thomas Glenn and Patsy McKinney were residents of a residential house located at 4704 NE 6th Ave., Portland, Oregon.

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3.

On August 12, 2008, at or around 9:00 a.m., the Bureau of Emergency Communication in Portland received a 911 call from a female caller who identified herself as "Raya." The caller reported she was walking past the address of 4704 NE 6th Ave., Portland, Oregon and heard: "slamming and a female screaming." The 911 operator did not request any additional information from the caller about what she heard or observed, the caller's last name, her address or any other information except for a cellular phone number. Portland Police were then called by dispatch to respond to the location. At no point did the responding police officers speak to the anonymous caller named "Raya" or obtain additional information before responding to the address.

4.

Portland Police Officers Douglas Matthews and Freddie Jackson, who were the first to respond, began knocking on the front door of plaintiffs' home. Thomas Glenn, the homeowner and resident, came to the door and spoke to the officers through a window. The officers demanded entry so they could search Mr. Glenn's house. Mr. Glenn did not consent to the entry. The officers did not have a search warrant. Within a few minutes, Mr. Glenn's girlfriend, plaintiff Patsy McKinney, who also lived in the home, came to the door after officers demanded. In response to questions, Ms. McKinney told the officers she was fine and nobody was hurt or needed assistance. The officers continued to demand entry into the home and threatened to break down the door. Under the threat of force, Ms. McKinney opened the front door. Officers Matthews, Jackson and other officers, who had responded, then entered plaintiffs' home and searched the first floor. The officers found no injured persons or evidence of a crime.

1 5.

2 After completing their search of the first floor, Officer Matthews stated he was going
3 to search the second floor. Mr. Glenn, who was standing in the stairway to the second floor,
4 complained about the search to the officers. Officer Matthews immediately grabbed Mr.
5 Glenn with both hands and threw him from the steps onto the ground floor below, drove his
6 knees into Mr. Glenn's back and handcuffed him. Mr. Glenn's right foot was seriously
7 injured during the violent takedown where he suffered a right mid-foot dislocation with deep
8 peroneal nerve traction injury. At no point had Mr. Glenn touched or posed a threat to
9 Officer Matthews, which would justify the use of force.
10

11 6.

12 Ms. McKinney verbally protested Officer Matthews' use of force on Mr. Glenn.
13 Then, suddenly and without warning, Officer Van Blokland, who has also responded and
14 entered the home, inappropriately used force on Ms. McKinney, when he slammed her
15 against the wall and handcuffed her, causing injuries to her finger, chest wall and back. The
16 officers completed their search of the house, including the second floor, and found no
17 evidence that a crime had been committed or that anyone was in need of emergency
18 assistance. The officers then arrested Mr. Glenn and took him to the NE Precinct in his
19 underwear, bathrobe and house slippers.
20

21 7.

22 Mr. Glenn was cited and charged with interfering with a peace officer – ORS 162.247
23 and obstructing governmental administration – ORS 162.235 because he did not consent to
24 the warrantless search of his house by Portland Police officers. Mr. Glen pled "Not Guilty"
25 and went to trial on November 17, 2008. Mr. Glenn was acquitted of all charges in
26

1 Multnomah County Circuit Court, Case No. 0808-50599. The court ruled that the officers'
2 search of Mr. Glenn's home was warrantless, was without consent and unconstitutional.

3 8.

4 Plaintiffs provided official tort claims notice to the City of Portland less than 180
5 days after the subject incident.

6
7 For his FIRST CLAIM FOR RELIEF against defendant City of Portland, plaintiff
8 Thomas Glenn alleges as follows:

9 **NEGLIGENCE**

10 9.

11 Plaintiff Thomas Glenn re-alleges paragraphs 1-8 as if fully set forth herein.

12 10.

13 The occurrence of this event was a result of the negligence of defendant City of
14 Portland in the following particulars:

- 15 a. Failing to administer timely and appropriate Portland Police Bureau officer
16 training with respect to warrantless searches and justification for use of force;
17 b. Allowing Portland Police Bureau officers to perform warrantless home searches
18 without probable cause and consent of the homes residents;
19 c. Failing to adequately assess and ensure that Portland Police Bureau officers
20 maintain sufficient competency to perform their duties.

21 11.

22 The City of Portland, through the actions and omissions of officers Matthews,
23 Jackson and the other responding officers of the Portland Police Bureau, was negligent in one
24 or more of the following particulars:

- 25 a. By unlawfully entering plaintiffs' home without a search warrant, plaintiffs'
26 consent, or exigent circumstances;

- b. By throwing plaintiff Thomas Glenn from stair steps onto the ground floor without justification;
- c. By using excessive force on plaintiff Thomas Glenn;
- d. By failing to leave the premises after officers determined the occupants were safe;
- e. By refusing to leave the premises when directed by plaintiff Thomas Glenn; and
- f. By arresting and imprisoning Thomas Glenn without probable cause.

12.

As a result of the negligence of the defendant, and as a substantial factor and legal cause thereof, plaintiff Thomas Glenn suffered the following injuries:

- a. Right foot dislocation of the first, second and third tarsometatarsal joints;
- b. Intercuneiform instability in the right foot;
- c. Deep peroneal nerve traction injury in the right foot;
- d. Sprained right foot; and
- e. Right elbow contusion.

13.

Plaintiff's injuries have caused him to suffer the following symptoms and conditions:

- a. Right foot pain and swelling;
- b. Decreased right foot range of motion, mobility and traction neuritis;
- c. Right foot stiffness;
- d. Right elbow pain and bruising;
- e. Headaches;
- f. Insomnia; and
- g. Increased risk of susceptibility to right foot joint arthritis.

///

1 14.

2 As a result of said personal injuries, Thomas Glenn has incurred approximately
3 \$67,240.48 in medical expenses and will incur future medical expenses, will need future
4 medical treatment and will incur future care costs in an amount to be determined at trial.
5

6 15.

7 The injuries sustained by plaintiff are permanent. Plaintiff's injuries have been
8 painful and will continue to be painful in the future. They have interfered with and will
9 continue to interfere with his normal and usual activities. For the above injuries, the plaintiff
10 should be awarded non-economic damages in an amount which a jury decides is fair, but not
11 to exceed \$350,000.00.
12

13 16.

14 As a result of the injuries he sustained, the plaintiff has lost past wages of
15 approximately \$40,320, the exact amount to be determined at trial. Plaintiff continues to lose
16 wages of approximately \$480 per week, and plaintiff will incur damages for future impaired
17 earning capacity, the exact amount to be determined at trial.

18 For his SECOND CLAIM FOR RELIEF against defendant City of Portland, plaintiff
19 Thomas Glenn alleges as follows:
20

21 **BATTERY**
22 **(Excessive Force)**

23 17.

24 Plaintiff Thomas Glenn re-alleges paragraphs 1-8 as if fully set forth herein.

25 ///

26 ///

18.

Defendant City of Portland, through the actions of officer Matthews, intended to cause and did cause offensive contact with Thomas Glenn and used excessive force by grabbing him, throwing him from stairs to the ground below, driving knees into his back, and handcuffing him.

19.

Officer Matthews' conduct was intentional, nonconsensual, offensive, harmful, insulting and not justified.

20.

As a result of Officer Matthews' battery and excessive force, Thomas Glenn suffered personal injury consisting of the injuries alleged in paragraph 12(a)-(e).

21.

Plaintiff re-alleges paragraphs 13-16.

For his THIRD CLAIM FOR RELIEF against defendant City of Portland, plaintiff Thomas Glenn alleges as follows:

FALSE ARREST

Count I

22.

Plaintiff Thomas Glenn re-alleges paragraphs 1-8 as if fully set forth herein.

23.

Defendant City of Portland, through the conduct of the Portland Police Bureau officers, intended to confine and did confine Thomas Glenn by arresting him for interfering with a peace officer and obstructing governmental administration and transporting him to the

1 NE Portland precinct jail.

2 24.

3 Mr. Glenn was made aware of his confinement when he was physically taken to the
4 ground by officer Matthews, placed in handcuffs, and told by officers he was under arrest.

5 25.

6
7 The arrest and confinement of Mr. Glenn was unlawful because the officers did not
8 have a factual basis to establish a probable cause to enter into Mr. Glenn's house and
9 thereafter to arrest Mr. Glenn.

10 26.

11 As a result of the Portland Police Bureau officers' false arrest of Mr. Glenn, Thomas
12 Glenn suffered personal injury consisting of the injuries alleged in paragraph 12(a)-(e).

13 27.

14
15 Plaintiff re-alleges paragraphs 13-16.

16 **FALSE IMPRISONMENT**

17 **COUNT II**

18 28.

19 Plaintiff Thomas Glenn re-alleges paragraphs 1-8 as if fully set forth herein.

20 29.

21 Defendant City of Portland, through the conduct of the Portland Police Bureau
22 officers, continued to confine and did confine Thomas Glenn by further detaining him at the
23 NE Portland precinct jail for interfering with a peace officer and obstructing governmental
24 administration.
25

26 ///

1 30.

2 Mr. Glenn was made aware of his continued confinement when Portland Police
3 Bureau officers refused to release him and issued him a citation for interfering with a peace
4 officer and obstructing governmental administration.

5 31.

6 The confinement of Mr. Glenn was unlawful because the officers did not have a
7 factual basis to form probable cause and detain Mr. Glenn.

8 32.

9 As a result of the Portland Police Bureau officers' false imprisonment of Mr. Glenn,
10 Thomas Glenn suffered stress, humiliation, anxiety, physical pain, embarrassment
11 inconvenience and loss of enjoyment of life. For the above injuries, the plaintiff should be
12 awarded non-economic damages in an amount which a jury decides is fair, but not to exceed
13 \$100,000.00.
14

15 For his FOURTH CLAIM FOR RELIEF against defendant City of Portland, plaintiff
16 Thomas Glenn alleges as follows:
17

18 **TRESPASS**

19 **(Unlawful Entry)**

20 33.

21 Plaintiff re-allege paragraphs 1-8 as if full set forth herein.
22

23 34.

24 The defendant's intrusion, through the conduct of the Portland Police Bureau officers,
25 onto plaintiff Thomas Glenn's property and into his home was not authorized by plaintiff,
26 was without a search warrant and probable cause, was intentional, and invaded and denied

1 plaintiff's interest in the exclusive possession of his property. Defendant's entry onto
 2 plaintiff's property was unlawful and in violation of plaintiff's Fourth Amendment rights,
 3 causing plaintiff economic damages as alleged in paragraphs 14 and 16.

4 35.

5 Defendant's trespass has caused plaintiff mental suffering, annoyance, inconvenience,
 6 worry and alarm all to his non-economic damages in an amount which a jury decides is fair,
 7 but not to exceed \$350,000.
 8

9 For her FIRST CLAIM FOR RELIEF against defendant City of Portland, plaintiff
 10 Patsy McKinney alleges as follows:

11 **NEGLIGENCE**

12 36.

13 Plaintiff Patsy McKinney re-alleges paragraphs 1-8 as if fully set forth herein.
 14

15 37.

16 The occurrence of this event was a result of the negligence of defendant City of
 17 Portland in the following particulars:

- 18 a. Failing to administer timely and appropriate Portland Police Bureau officer
 19 training with respect to warrantless searches and justification for use of force;
- 20 b. Allowing Portland Police Bureau officers to perform warrantless home searches
 21 without probable cause and consent of the homes residents;
- 22 c. Failing to adequately assess and ensure that Portland Police Bureau officers
 23 maintain sufficient competency to perform their duties.

24 38.

25 The City of Portland, through the actions and omissions of officers Matthews,
 26 Jackson, Van Blokland and the other responding officers of the Portland Police Bureau, was
 negligent in one or more of the following particulars:

- a. By unlawfully entering plaintiffs' home without a search warrant, plaintiffs' consent, or exigent circumstances;
- b. By slamming plaintiff Patsy McKinney against a wall without justification;
- c. By using excessive force on plaintiff Patsy McKinney;
- d. By failing to leave the premises after officers determined the occupants were safe;
- e. By refusing to leave the premises when directed by plaintiff Thomas Glenn; and
- f. By arresting Patsy McKinney without probable cause.

39.

As a result of the negligence of the defendant, and as a substantial factor and legal cause thereof, plaintiff Patsy McKinney suffered the following injuries:

- a. Acute cervical strain;
- b. Left side hematoma of the scalp;
- c. Chest wall strain and contusion; and
- d. Sprained right middle finger.

40.

Plaintiff's injuries have caused her to suffer the following symptoms and conditions:

- a. Neck & head pain;
- b. Chest pain;
- c. Pain in the right middle finger
- d. Decreased range of motion and mobility in the right middle finger; and
- e. Headaches.

41.

As a result of said personal injuries, Patsy McKinney has incurred approximately

\$418.16 in medical expenses.

1 42.

2 Plaintiff's injuries have been painful and they have interfered with her normal and
3 usual activities. For the above injuries, the plaintiff should be awarded non-economic
4 damages in an amount which a jury decides is fair, but not to exceed \$125,000.00.

5 For her SECOND CLAIM FOR RELIEF against defendant City of Portland, plaintiff
6 Patsy McKinney alleges as follows:
7

8 **BATTERY**

9 **(Excessive Force)**

10 43.

11 Plaintiff Patsy McKinney re-alleges paragraphs 1-8 as if fully set forth herein.

12 44.

13 Defendant City of Portland, through the actions of Officer Van Blokland, intended to
14 cause and did cause offensive contact with Patsy McKinney and used excessive force by
15 grabbing her, slamming her chest and face against a wall, and handcuffing her.
16

17 45.

18 Officer Van Blokland's conduct was intentional, nonconsensual, offensive, harmful,
19 insulting and not justified.

20 46.

21 As a result of Officer Van Blokland's battery and excessive force, Patsy McKinney
22 suffered personal injury consisting of the injuries alleged in paragraph 39(a)-(d).
23

24 47.

25 Plaintiff re-alleges paragraphs 40-42.

26 ///

1 For her THIRD CLAIM FOR RELIEF against defendant City of Portland, plaintiff
2 Patsy McKinney alleges as follows:

3 **FALSE ARREST**

4 48.

5 Plaintiff Patsy McKinney re-alleges paragraphs 1-8 as if fully set forth herein.

6 49.

7 Defendant City of Portland, through the conduct of the Portland Police Bureau
8 officers, intended to confine and did confine Patsy McKinney by physically restraining and
9 handcuffing her in her home.
10

11 50.

12 Ms. McKinney was made aware of her confinement when she was physically pushed
13 into a wall by Officer Van Blokland and placed in handcuffs.
14

15 51.

16 The arrest and confinement of Ms. McKinney was unlawful because the officers did
17 not have a factual basis to establish a probable cause to enter into Ms. McKinney's house and
18 thereafter to arrest Ms. McKinney.

19 52.

20 As a result of the Portland Police Bureau officers' false arrest of Ms. McKinney,
21 Patsy McKinney suffered personal injury consisting of the injuries alleged in paragraph
22 39(a)-(d).
23

24 53.

25 Plaintiff re-alleges paragraphs 40-42.

26 ///

1 For her FOURTH CLAIM FOR RELIEF against defendant City of Portland, plaintiff
 2 Patsy McKinney alleges as follows:

3 **TRESPASS**
 4 **(Unlawful Entry)**

5 54.

6 Plaintiff re-allege paragraphs 1-8 as if full set forth herein.

7 55.

8 The defendant's intrusion, through the conduct of the Portland Police Bureau officers,
 9 onto plaintiff Patsy McKinney's property and into her home was not authorized by plaintiff,
 10 was without a search warrant and probable cause, was intentional, and invaded and denied
 11 plaintiff's interest in the exclusive possession of her property. Defendant's entry onto
 12 plaintiff's property was unlawful and in violation of plaintiff's Fourth Amendment rights,
 13 causing plaintiff economic damages as alleged in paragraph 41.
 14

15 56.

16 Defendant's trespass has caused plaintiff mental suffering, annoyance, inconvenience,
 17 worry and alarm all to her non-economic damages in an amount which a jury decides is fair,
 18 but not to exceed \$125,000.
 19

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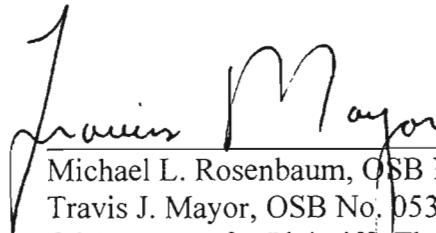
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26 ///

1 WHEREFORE, plaintiff Thomas Glenn prays for a judgment in his favor for non-
2 economic damages in an amount which a jury decides is fair, but not to exceed \$350,000,
3 \$67,240.48 in past medical expenses, approximately \$40,320 in lost income, the exact
4 amount to be determined at trial, and future medical expenses and future impaired earning
5 capacity in an amount to be determined at trial, plus plaintiff's costs and disbursements
6 incurred herein.
7

8 WHEREFORE, plaintiff Patsy McKinney prays for a judgment in her favor for non-
9 economic damages in an amount which a jury decides is fair, but not to exceed \$125,000,
10 \$418.16 in past medical expenses, plus plaintiff's costs and disbursements incurred herein.

11 DATED this 11 day of August, 2010.
12
13

14
15 
16 Michael L. Rosenbaum, OSB No. 76026
17 Travis J. Mayor, OSB No. 053210
18 Of Attorneys for Plaintiffs Thomas Glenn and Patsy
McKinney

19 Trial Attorney: Michael L. Rosenbaum, OSB 76026
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26

In the Circuit Court of the State of Oregon
For the County of Multnomah

THOMAS GLENN; and PATSY McKINNEY,

Plaintiffs,

v.

CITY OF PORTLAND, a public body,

Defendant.

Case No. 1008-11737

SUMMONS

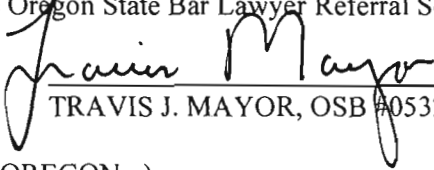
To: Defendant City of Portland, by and through its attorney Linda Meng, Office of the City Attorney, 1221 SW 4th Ave., Room 430, Portland, OR 97204

You are hereby required to appear and defend the complaint filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!

You must "appear" in this case or the other side will win automatically. To "appear," must file with the court a legal paper called a "motion" or "answer." The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help finding an attorney, you may call the Oregon State Bar Lawyer Referral Service at 503-684-3763 or toll free in Oregon at 800-452-7636.



TRAVIS J. MAYOR, OSB #053210

STATE OF OREGON)

) ss.

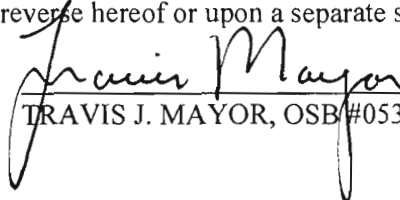
County of Multnomah)

I, the undersigned attorney of record for the plaintiff(s), certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.

TRAVIS J. MAYOR, OSB #053210

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the
PAGE 1 - SUMMONS

individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.



TRAVIS J. MAYOR, OSB #053210

Post office address at which papers in the above-entitled action may be served by mail:

Travis J. Mayor, OSB #053210
1826 NE Broadway
Portland, OR 97232-1430
Telephone: (503) 288-8000

CIRCUIT COURT OF THE STATE OF OREGON FOR MULTNOMAH COUNTY

THOMAS GLENN; and PATSY McKINNEY
Plaintiff / Petitioner

Cause #: 1008-11737

Declaration of Mailing of:
Summons and Complaint

vs.
CITY OF PORTLAND, a public body
Defendant / Respondent

FILED
AUG 13 AM 10:38
CIRCUIT COURT
FOR MULTNOMAH COUNTY

The undersigned hereby declares: that I, Teresa L. Dean, am a legal resident of the United States of America and am employed in the city of Portland, in the state of OR.

That I am over the age of twenty-one, and not party to, nor interested in the within entitled action. My business address is 314 SW 4th Ave. Portland, OR 97204.

That on 08/12/2010, after substituted service was made on Aug 12 2010 8:48AM, I completed service by depositing a true copy of the Summons and Complaint, marked with confirmation of date, time, and place of substituted service in a first class postage paid envelope addressed to 1221 SW 4TH AVE ROOM 430 PORTLAND, OR 97204, at a US Post Office.


That I addressed the envelope as follows:

CITY OF PORTLAND c/o LINDA MENG, CITY ATTORNEY
1221 SW 4TH AVE
ROOM 430
PORTLAND OR 97204

ENTERED
AUG 16 2010
IN REGISTER

I hereby declare that the above statement is true to the best of my knowledge and belief and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

I executed this declaration on August 12, 2010 at Portland, OR.


Declarant Teresa L. Dean



Tracking #: 6283589



IN THE
CIRCUIT COURT OF THE STATE OF OREGON FOR MULTNOMAH COUNTY

THOMAS GLENN; and PATSY McKINNEY

Plaintiff/Petitioner

vs.
CITY OF PORTLAND, a public body

Defendant/Respondent

Hearing Date:

CAUSE NO:
1008-11737

AFFIDAVIT OF SERVICE OF:
Summons and Complaint

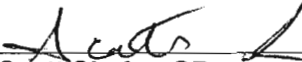
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2010 AUG 13 AM 10:30
CIRCUIT COURT
FOR MULTNOMAH COUNTY

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a resident of the state of service, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the **12th day of August, 2010**, at **8:48 AM**, at the address of **1221 SW 4TH Avenue ROOM 430, PORTLAND, Multnomah(P) County, OR 97204**; this affiant served the above described documents upon **CITY OF PORTLAND c/o LINDA MENG, CITY ATTORNEY**, by then and there personally delivering **1** true and correct copy(ies) thereof, by then presenting to and leaving the same with **Dion Connelly, Receptionist, A white female approx. 21-25 years of age 5'6"-5'8" in height with brown hair.**

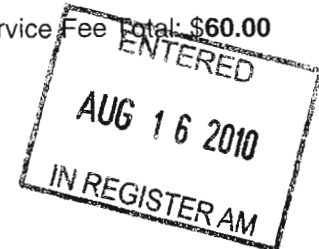
No Information was provided or discovered that indicates that the subjects served are members of the U.S. military.

DATED this **12th** day of **August, 2010**.

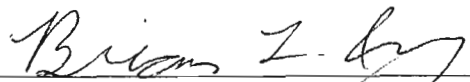


Scott Shafer, OR

Service Fee Total: \$60.00



SUBSCRIBED AND SWORN to before me this **12th** day of **August, 2010**



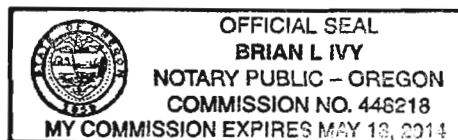
NOTARY PUBLIC in and for the State of **Oregon**
Residing at: _____
My Commission Expires: _____



FOR: **Rosenbaum Micheal L**
REF: **2962**

ORIGINAL PROOF OF
SERVICE

Tracking #: **6283589** PDX FIL



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2010 SEP -9 AM 11:23
CIRCUIT COURT
FOR MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

THOMAS GLENN; and PATSY
McKINNEY,

Plaintiffs,

v.

CITY OF PORTLAND, a public body,

Defendant.

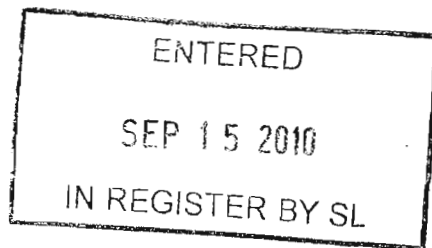
Case No. 1008-11737

PLAINTIFFS' NOTICE OF INTENT
TO APPLY FOR AN ORDER OF
DEFAULT AGAINST DEFENDANT

To: Defendant City of Portland, by and through its attorney, William Manlove, City Attorney's Office, 1221 SW 4th Ave., Suite 430, Portland, Oregon 97204.

Pursuant to ORCP 69, plaintiffs intend to apply for an order of default against defendant City of Portland on September 22, 2010 if defendant City of Portland has not filed a responsive pleading to the Complaint in this matter before that date.

DATED this 8th day of September, 2010.



Travis J. Mayor

Travis J. Mayor, OSB No. 053210
Michael L. Rosenbaum, OSB No. 76026
Of Attorneys for Plaintiffs Thomas Glenn and
Patsy McKinney

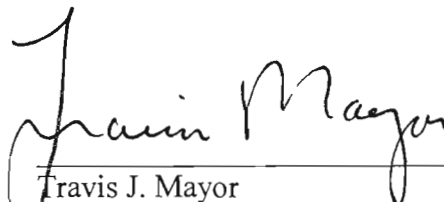
CERTIFICATE OF SERVICE

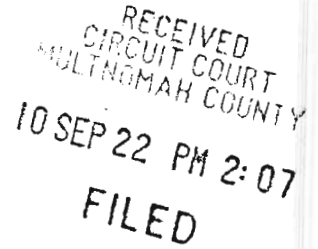
I hereby certify that I served, on the date set forth below, the foregoing PLAINTIFFS' NOTICE OF INTENT TO APPLY FOR AN ORDER OF DEFAULT AGAINST DEFENDANT via the following method on:

William Manlove III
City Attorney's Office
1221 SW 4th Ave., Suite 430
Portland, OR 97204

By First Class Mail.

DATED this 8th day of September, 2010.


Travis J. Mayor



IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

THOMAS GLENN and PATSY
MCKINNEY,

Case No. 1008-11737

Plaintiffs,

**DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES**

v.

CITY OF PORTLAND, a public body,
Defendant.

Defendant City of Portland ("City") answers plaintiffs' Complaint as follows:

1.

City admits the allegations contained in paragraph 1 of the Complaint.

2.

City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 2 of the Complaint, and therefore deny those allegations.

3.

City admits that at approximately 9:01 a.m., the City's Bureau of Emergency Communications ("BOEC") received a 911 from a female caller who identified herself as "Raya." The caller reported she had "reason to believe" there was a domestic dispute at 4704 NE 6th Avenue. When asked by the 911 call taker to explain, the caller said that just moments before she had walked by the residence at 4704 NE 6th Avenue, and had heard slamming and a female screaming. City admits the 911 call taker did not ask the caller her last name or her address, but the call taker took the caller's cell phone number and confirmed

1 the correct area code. The responding officers confirmed the address with the dispatcher
2 prior to approaching the reported location. At one point, Officer Jackson tried to phoning the
3 caller but got no answer.

4 Otherwise, City denies the allegations contained in paragraph 3 of the Complaint.

5 4.

6 Officers Jackson and Mathews went up the front porch of the residence at 4704 NE
7 6th Avenue ("the residence".) Officer Jackson knocked on the door at least four times before
8 getting an answer. Plaintiff Glenn ("Glenn") yelled angrily to the officers to go away.
9 Officer Jackson explained to Glenn the circumstances of receiving the 911 call, and informed
10 Glenn the officers needed to come inside to make sure no person was hurt, injured or needed
11 assistance. Glenn refused, screaming at the officers. Officer Mathews explained that the
12 officers needed to see everyone before they could leave. Glenn continued to yell that he was
13 not going to open the door. Officer Mathews explained to Glenn four or five times that the
14 police would force the door open. Officers Jackson and Mathews called a supervisor and an
15 additional cover officer.

16 Plaintiff McKinney ("McKinney") came to the front door. Sgt. Montgomery
17 explained the circumstances of the officers' presence, and explained that they needed to
18 come inside to make sure no person was hurt, injured or needed assistance. After hearing
19 this explanation, McKinney opened the front door and allowed the officers to enter the
20 residence. The officers entered the residence to search for injured or hurt persons or persons
21 needing assistance. The officers did not have a warrant.

22 The officers searched the first floor and did not find any injured or hurt person, or
23 anyone needing their assistance.

24 Otherwise, City denies the allegations contained in paragraph 4 of the Complaint.

25 ///

26 ///

1 5.

2 After the officers searched the first floor, they told Glenn they needed to check the
3 upstairs of the residence. Glenn and McKinney were standing at the base of the stairs
4 leading to the upper floor, blocking the steps and preventing the officers from passing.
5 Glenn stretched his arm across stairs and told the officers they were not going upstairs.

6 Officer Mathews took Glenn's right arm and placed it in a two handed minimum
7 custody control hold. As Mathews was escorting Glenn away from the stairs to the front
8 porch, Glenn turned his body to the left, closed the distance with Officer Mathews and began
9 to physically resist Mathews' efforts to get Glenn to the front porch. Concerned for his
10 safety, Mathews took Glenn to the floor of the residence in a controlled manner, using his
11 forearm to protect Glenn's head from striking anything.

12 Officer Staul and Sgt. Passadore grabbed Glenn's arms and turned him over on to his
13 stomach. Officer Mathews then was able go handcuff Glenn.

14 Mathews asked Glenn if he was injured, and Glenn refused to answer. Mathews
15 asked Glenn if he wanted an ambulance, and Glenn said "No man."

16 Otherwise, City denies the allegations contained in paragraph 5 of the Complaint.

17 6.

18 When the officers entered and began their welfare check on the first floor of the
19 residence, Officer Van Blokland had asked McKinney to come out onto the front porch.
20 McKinney refused and Van Blokland initially allowed her to remain inside. However, when
21 McKinney blocked the stairs and refused to allow the officers to continue their welfare check
22 on the second level, Van Blokland took a hold of McKinney's left arm and escorted her onto
23 the front porch. Van Blokland handcuffed McKinney and had her sit in a chair on the front
24 porch. Van Blokland again explained why the police were there, conducting their welfare
25 check. After this explanation, McKinney said the explanation made sense and that she
26 understood why the police were conducting a welfare check. City admits its officers arrested

1 Glenn, who at the time was covered in his boxer underwear, a bathrobe, slippers, and taken to
2 NE Precinct. Prior to leaving the residence, McKinney gave the officers a pair of Glenn's
3 pants. At NE Precinct, officers assisted Glenn in putting on the pair of pants.

4 Otherwise, City denies the allegations contained in paragraph 6 of the Complaint.

5 7.

6 City admits Glenn was charged with violating ORS 162.247 and ORS 162.235, and
7 that Glenn was tried and was acquitted. City lacks information sufficient at this time to
8 admit or deny the allegations regarding the particular rulings of the criminal court, and
9 therefore denies those allegations. Regardless, the rulings of the criminal court are irrelevant
10 to the current civil action.

11 8.

12 City admits plaintiffs provided timely tort claim notice.

13 9.

14 City incorporates its response contained in its Answer in paragraphs 1-8, above.

15 10-11.

16 City denies the allegations contained in paragraphs 10-11 of the Complaint.

17 12-13.

18 City lacks information sufficient at this time to admit or deny the allegations
19 regarding the nature or extent of Glenn's alleged physical injuries, if any, and therefore
20 denies the allegations contained in paragraphs 12-13 of the Complaint.

21 14-16.

22 City lacks information sufficient at this time regarding the amount, necessity or
23 reasonableness of any of Glenn's medical expenses or lost past wages, and therefore denies
24 those allegations contained in paragraphs 14 and 16 of the Complaint. City lacks information
25 sufficient at this time to admit or deny the allegations contained in paragraph 15 of the
26 Complaint concerning the permanency of plaintiff's alleged injuries, and therefore denies

1 those allegations. Regardless, City denies it is responsible for any damages to Glenn.

2 17.

3 City incorporates its response contained in its Answer in paragraphs 1-8, above.

4 18-20.

5 City denies the allegations contained in paragraphs 18-20 of the Complaint.

6 21.

7 City incorporates its response contained in its Answer in paragraphs 13-16, above.

8 22.

9 City incorporates its response contained in its Answer in paragraphs 1-8, above.

10 23-24.

11 City admits the allegations contained in paragraphs 23 and 24 of the Complaint.

12 25.

13 City denies the allegations contained in paragraph 25 of the Complaint.

14 26.

15 City lacks information sufficient at this time to admit or deny the allegations
16 regarding the nature or extent of Glenn's alleged physical injuries, if any, and therefore
17 denies the allegations contained in 26 of the Complaint.

18 27.

19 City incorporates its response contained in its Answer in paragraphs 13-16, above.

20 28.

21 City incorporates its response contained in its Answer in paragraphs 1-8, above.

22 29-30.

23 City admits the allegations contained in paragraphs 29-30 of the Complaint.

24 31.

25 City denies the allegations contained in paragraph 31 of the Complaint.

26 ///

1 32.

2 City lacks information sufficient at this time to admit or deny the nature or extent of
3 plaintiff's alleged non-economic damages, and therefore denies those allegations contained
4 in paragraph 32 of the Complaint. Regardless, City denies it is responsible for any damages
5 to Glenn.

6 33.

7 City incorporates its response contained in its Answer in paragraphs 1-8, above.

8 34.

9 City admits its officers entered the residence without a warrant but intentionally
10 entered pursuant to their community care taking functions as police officers. Otherwise, City
11 denies the allegations contained in paragraph 34 of the Complaint.

12 35.

13 City lacks information sufficient at this time to admit or deny the nature or extent of
14 plaintiff's alleged non-economic damages, and therefore denies those allegations contained
15 in paragraph 32 of the Complaint. Regardless, City denies it is responsible for any damages
16 to Glenn.

17 36.

18 City incorporates its response contained in its Answer in paragraphs 1-8, above.

19 37-38.

20 City denies the allegations contained in paragraphs 37 and 38 of the Complaint.

21 39-40.

22 City lacks information sufficient at this time to admit or deny the nature or extent of
23 McKinney's alleged injuries and conditions, and therefore denies those allegations contained
24 in paragraphs 39-40 of the Complaint. Regardless, City denies it is responsible for those
25 alleged injuries.

26 ///

1 41-42.

2 City lacks information sufficient at this time to admit or deny the nature or extent of
3 McKinney's alleged economic or non-economic damages, including her alleged medical
4 expenses, and therefore denies those allegations contained in paragraphs 41 and 42 of the
5 Complaint. Regardless, City denies it is responsible for any damages to McKinney.

6 43.

7 City incorporates its response contained in its Answer in paragraphs 1-8, above.

8 44-45.

9 City denies the allegations contained in paragraphs 44 and 45 of the Complaint.

10 46.

11 City lacks information sufficient at this time to admit or deny the nature or extent of
12 McKinney's alleged injuries and conditions, and therefore denies those allegations contained
13 in paragraph 46 of the Complaint. Regardless, City denies it is responsible for those alleged
14 injuries.

15 47.

16 City incorporates its response contained in its Answer in paragraphs 40-42, above.

17 48.

18 City incorporates its response contained in its Answer in paragraphs 1-8, above.

19 49-50.

20 City admits Officer Van Blokland used an escort hold to remove McKinney from the
21 bottom of the stairs where she was blocking the other officers from proceeding with the
22 welfare check to the upstairs, escorted McKinney to the front porch, where he handcuffed her
23 and allowed her to sit in a chair on the porch. Otherwise, City denies the allegations
24 contained in paragraphs 49-50 of the Complaint.

25 51.

26 City denies the allegations contained in paragraph 51 of the Complaint.

1 52.

2 City lacks information sufficient at this time to admit or deny the nature or extent of
3 McKinney's alleged injuries and conditions, and therefore denies those allegations contained
4 in paragraph 52 of the Complaint. Regardless, City denies it is responsible for those alleged
5 injuries.

6 53.

7 City incorporates its response contained in its Answer in paragraphs 40-42, above.

8 54.

9 City incorporates its response contained in its Answer in paragraphs 1-8, above.

10 55.

11 City admits its officers entered the residence without a warrant but intentionally
12 entered pursuant to their community care taking functions as police officers. Otherwise, City
13 denies the allegations contained in paragraph 55 of the Complaint.

14 56.

15 City lacks information sufficient at this time to admit or deny the allegations
16 concerning the nature or extent of McKinney's alleged injuries or non-economic damages,
17 and therefore denies those allegations contained in paragraph 56 of the Complaint.
18 Regardless, City denies that it is responsible for any alleged injuries or damages.

19 57.

20 Except as expressly admitted above, City denies each and every remaining allegation
21 of plaintiffs' Complaint, either because those allegations are untrue, or because City is
22 without knowledge or information sufficient to form a belief as to the truth of those
23 allegations at the present time.

24 BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES, City
25 alleges as follows:

26 ///

58.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs have failed to state a claim upon which relief can be granted.

59.

SECOND AFFIRMATIVE DEFENSE

(Reasonable Suspicion)

Any stop or detention of plaintiffs was based upon reasonable suspicion.

60.

THIRD AFFIRMATIVE DEFENSE

(Probable Cause)

Any stop, detention, arrest or other seizure of plaintiffs, or the initiation of any criminal prosecution, was based on probable cause.

61.

FOURTH AFFIRMATIVE DEFENSE

(Stopping of Person – ORS 161.315(5))

City's police officers were authorized to use physical force or other control or restraint on plaintiffs, including the use of handcuffs, to effectuate the purpose of the stop or detention, and to ensure their physical safety.

62.

FIFTH AFFIRMATIVE DEFENSE

(Arrest – ORS 161.205(5))

City's police officers were authorized to use physical force or control on plaintiff Glenn in making an arrest of Glenn.

///

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63.

SIXTH AFFIRMATIVE DEFENSE

(Privilege)

The actions of City's police officers were privileged, as they were necessary to carry out their duties as law enforcement officers.

64.

SEVENTH AFFIRMATIVE DEFENSE

(Justification)

The actions of City's police officers were justified, as they were necessary to carry out their duties as law enforcement officers.

65.

EIGHTH AFFIRMATIVE DEFENSE

(Good Faith)

Any control or force directed at or on plaintiffs, any detention of plaintiff McKinney, any arrest of plaintiff Glenn, and any initiation of any criminal prosecution of plaintiff Glenn, was done in good faith by City's police officers.

66.

NINTH AFFIRMATIVE DEFENSE

(Consent)

Plaintiff McKinney, a person with apparent authority, consented to the entry of the City's police officers into the residence to make the welfare check.

67.

TENTH AFFIRMATIVE DEFENSE

(Community Care Taking –ORS 133.033/Emergency Aid Doctrine)

The City's police officers were authorized to stop, detain, or take plaintiffs into custody and to enter the residence based on their authority under Oregon's Community Care

1 Taking statute, ORS 133.033, and the emergency aid exception to any warrant requirement.

2 68.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 (Comparative Fault –ORS 31.600)

5 Plaintiffs' injuries, if any, were caused by plaintiffs' negligence in one or more of the
6 following particulars:

7 a. Refusing to obey the lawful commands of a uniformed police officer;
8 b. Interfering with law enforcement activities of uniformed police
9 officers;

10 c. Disrupting lawful enforcement activities of uniformed police officers;
11 and

12 d. Physically resisting the efforts of uniformed police officers to control,
13 detain and arrest plaintiffs, and to conduct the welfare check of the residence.

14 69.

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 (Limitation on Damages – ORS 30.270)

17 Plaintiffs' claims are subject to all the limitations, conditions, and immunities
18 contained in Oregon's Tort Claims Act, ORS 30.265 et seq., including but not limited to the
19 limitation on damages found at ORS 30.270.

20 70.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 (No Duplicative Damages)

23 Plaintiffs are not entitled to recover duplicative damages.

24 WHEREFORE, having fully answered plaintiff's Complaint, City prays for the
25 following relief:

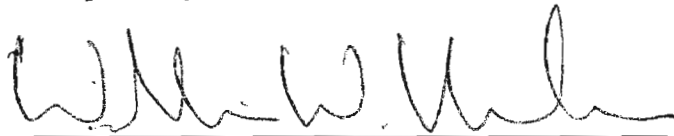
26 A. That judgment be entered in favor of City and against plaintiffs;

1 B. That City be awarded its reasonable costs incurred herein; and

2 C. That City be awarded such other relief as the Court deems just and equitable.

3
4 DATED: September 22, 2010.

5 Respectfully submitted,

6 

7
8 William W. Manlove, OSB No. 891607
9 Senior Deputy City Attorney
10 Email: william.manlove@portlandoregon.gov
11 Of Attorneys for Defendants
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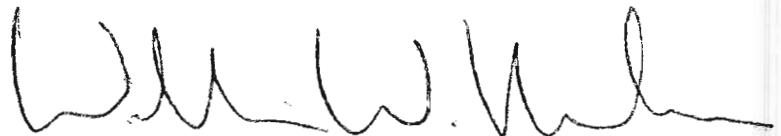
CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANT'S ANSWER AND
AFFIRMATIVE DEFENSES on:

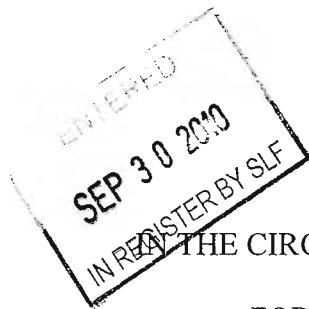
TRAVIS J. MAYOR
ATTORNEY AT LAW
1826 NE BROADWAY
PORTLAND, OR 97232-1430
Of Attorneys for Plaintiffs

on September 22, 2010, by causing a full, true and correct copy thereof, addressed to the last-
known address (or fax number) of said attorney, to be sent by the following method(s):

- ☒ by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal
Service in Portland, Oregon.
- ☐ by **hand delivery**.
- ☐ by **facsimile transmission**.



WILLIAM W. MANLOVE, OSB #891607
Senior Deputy City Attorney
Email: William.Manlove@portlandoregon.gov
Fax: (503) 823-3089
Of Attorneys for Defendants



RECEIVED
CIRCUIT COURT
MULTNOMAH COUNTY

10 SEP 29 PM 1:34

FILED

THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

THOMAS GLENN; and PATSY
McKINNEY,

Plaintiffs,

v.

CITY OF PORTLAND, a public body,

Defendant.

Case No. 1008-11737

REPLY TO DEFENDANT'S ANSWER
AND AFFIRMATIVE DEFENSES

In Reply to Defendant's Answer and Affirmative Defenses, plaintiffs allege as follows:

1.

Plaintiffs deny paragraph 59 of Defendant's Answer and Affirmative Defenses. The responding police officers did not have a reasonable suspicion to stop or detain plaintiffs in their own home on August 12, 2008.

2.

Plaintiffs deny paragraph 60 of Defendant's Answer and Affirmative Defenses. The responding police officers did not have probable cause to enter and/or search plaintiffs home on August 12, 2008 because they had no evidence that anyone had been injured, that anyone was in serious harm, or that a crime had been committed. Plaintiffs' home was quiet when the responding officers arrived and there were no signs of a disturbance. Further, both plaintiffs informed the responding officers that they were not injured and they did not need assistance.

1 3.

2 Plaintiffs deny paragraphs 61 through 65 of Defendant's Answer and Affirmative
3 Defenses. At no point did the responding officers have probable cause to enter and search
4 plaintiffs' home or arrest plaintiffs. Further, the officers' use of force against plaintiffs was
5 not necessary, justified or reasonable under the circumstances.
6

7 4.

8 Plaintiffs deny paragraph 66 of Defendant's Answer and Affirmative Defenses.
9 Neither plaintiff consented to the entry and of the responding police officers into their home,
10 and subsequent search, to make a welfare check. Plaintiff McKinney opened the front door
11 only after the responding police officers threatened to use force to break down the door.
12

13 5.

14 Plaintiffs deny paragraph 67 of Defendant's Answer and Affirmative Defenses. The
15 responding police officers did not have evidence that would justify entry into plaintiffs'
16 home under ORS 133.033, and the police officers' warrantless entry into plaintiffs' home
17 failed to meet any of the constitutional exceptions to the search warrant requirement.

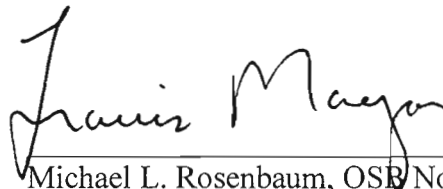
18 WHEREFORE, plaintiff Thomas Glenn prays for a judgment in his favor for non-
19 economic damages in an amount which a jury decides is fair, but not to exceed \$350,000,
20 \$67,240.48 in past medical expenses, approximately \$40,320 in lost income, the exact
21 amount to be determined at trial, and future medical expenses and future impaired earning
22 capacity in an amount to be determined at trial, plus plaintiff's costs and disbursements
23 incurred herein.
24

25 ///

26 ///

1 WHEREFORE, plaintiff Patsy McKinney prays for a judgment in her favor for non-
2 economic damages in an amount which a jury decides is fair, but not to exceed \$125,000,
3 \$418.16 in past medical expenses, plus plaintiff's costs and disbursements incurred herein.

4 DATED this 28 day of September, 2010.
5
6

7 
8

9 Michael L. Rosenbaum, OSB No. 76026
10 Travis J. Mayor, OSB No. 053210
11 Of Attorneys for Plaintiffs Thomas Glenn and Patsy
McKinney

12 Trial Attorney: Michael L. Rosenbaum, OSB 76026
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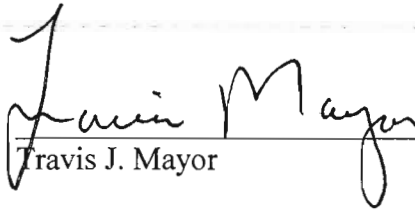
CERTIFICATE OF SERVICE

I hereby certify that I served, on the date set forth below, the foregoing REPLY TO
DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES via the following method on:

William Manlove III
City Attorney's Office
1221 SW 4th Ave., Suite 430
Portland, OR 97204

By First Class Mail.

DATED this 28th day of September, 2010.


Travis J. Mayor

*pdlt
Rm*

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

2011 MAR - 9 AM 10: 31

THOMAS GLENN; and PATSY
McKINNEY,

Plaintiffs,

v.

CITY OF PORTLAND, a public body,

Defendant.

FILED
Case No. 1008-11737

MOTION AND ORDER TO
POSTPONE CIVIL TRIAL

ENTERED
MAR - 9 2011
IN REGISTER BY EG

Pursuant to UTCR 6.030, ☒ Plaintiffs ☐ Defendant moves the court to postpone the current trial date of April 11, 2011 for the following reasons: Discovery is ongoing and not complete.

Case filing (or reinstatement) date: August 11, 2010

Number of prior postponements: 0

REQUESTED SETOVER:

☒ Regular course;

☐ to

Opposing Party:

☒ Consents

☐ Objects

Probable Trial Status:

☐ Court

☒ Jury

Estimated Total Length of Trial: 4 days

I certify that I have advised my clients of this request and served a copy of this motion on all opposing parties. If objected to, at least one judicial day's notice of the date and time of the Ex Parte appearance was given to all opposing counsel.

Dated: 3/7/2011

Signature of Attorney: *Travis J. Mayor*

Print name & OSB #: Travis J. Mayor, OSB No. 053210

Attorney for: Plaintiffs

Phone Number: (503) 288-8000

ORDER

The motion to postpone is **GRANTED**:

☒ in the regular course

☐ to

Dated: MAR 09 2011

Franker Maurer Jr
Presiding Judge

SUBMIT THE ORIGINAL AND ONE COPY OF THIS FORM (SLR 7.035(2)). Attach stamped, self addressed confirmation cards for all parties. Any contested requests must be presented at Ex Parte. See UTCR 6.030 and SLR 7.035 for further guidelines.

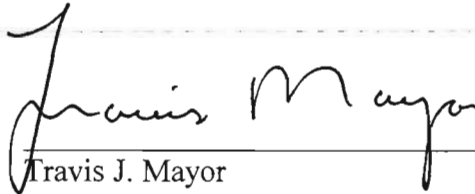
CERTIFICATE OF SERVICE

I hereby certify that I served, on the date set forth below, the foregoing MOTION AND ORDER
TO POSTPONE CIVIL TRIAL via the following method on:

William Manlove III
City Attorney's Office
1221 SW 4th Ave., Suite 430
Portland, OR 97204

By First Class Mail.

DATED this 7th day of March, 2011.


Travis J. Mayor

RECEIVED

MAR 22 2011

City Attorneys Office

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

THOMAS GLENN; and PATSY
McKINNEY,

Plaintiffs,

v.

CITY OF PORTLAND, a public body,

Defendant.

Case No. 1008-11737

FIRST AMENDED COMPLAINT
(Negligence; Battery – Excessive Force;
False Arrest; False Imprisonment;
Trespass – Unlawful Entry; Violation of
42 U.S.C. § 1983)

PRAAYER: \$150,000 - \$499,000

(CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION)

JURY TRIAL DEMANDED

Plaintiffs allege as follows:

1.

At all material times, defendant City of Portland was a municipality and public body located in Multnomah County, Oregon. At all material times, the Portland Police Bureau was a law enforcement agency operated by defendant City of Portland. At all material times, Douglas Matthews, Freddie Jackson and Kelly Van Blokland were police officers acting within the course and scope of their employment for the Portland Police Bureau and the City of Portland.

2.

At all material times, plaintiffs Thomas Glenn and Patsy McKinney were residents of a residential house located at 4704 NE 6th Ave., Portland, Oregon.

1 3.

2 On August 12, 2008, at or around 9:00 a.m., the Bureau of Emergency
3 Communication in Portland received a 911 call from a female caller who identified herself as
4 "Raya." The caller reported she was walking past the address of 4704 NE 6th Ave., Portland,
5 Oregon and heard: "slamming and a female screaming." The 911 operator did not request
6 any additional information from the caller about what she heard or observed, the caller's last
7 name, her address or any other information except for a cellular phone number. Portland
8 Police were then called by dispatch to respond to the location. At no point did the
9 responding police officers speak to the anonymous caller named "Raya" or obtain additional
10 information before responding to the address.
11

12 4.

13 Portland Police Officers Douglas Matthews and Freddie Jackson, who were the first
14 to respond, began knocking on the front door of plaintiffs' home. Thomas Glenn, the
15 homeowner and resident, came to the door and spoke to the officers through a window. The
16 officers demanded entry so they could search Mr. Glenn's house. Mr. Glenn did not consent
17 to the entry. The officers did not have a search warrant. Within a few minutes, Mr. Glenn's
18 girlfriend, plaintiff Patsy McKinney, who also lived in the home, came to the door after
19 officers demanded. In response to questions, Ms. McKinney told the officers she was fine
20 and nobody was hurt or needed assistance. The officers continued to demand entry into the
21 home and threatened to break down the door. Under the threat of force, Ms. McKinney
22 opened the front door. Officers Matthews, Jackson and other officers, who had responded,
23 then entered plaintiffs' home and searched the first floor. The officers found no injured
24 persons or evidence of a crime.
25
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5.

After completing their search of the first floor, Officer Matthews stated he was going to search the second floor. Mr. Glenn, who was standing in the stairway to the second floor, complained about the search to the officers. Officer Matthews immediately grabbed Mr. Glenn with both hands and threw him from the steps onto the ground floor below, drove his knees into Mr. Glenn's back and handcuffed him. Mr. Glenn's right foot was seriously injured during the violent takedown where he suffered a right mid-foot dislocation with deep peroneal nerve traction injury. At no point had Mr. Glenn touched or posed a threat to Officer Matthews, which would justify the use of force.

6.

Ms. McKinney verbally protested Officer Matthews' use of force on Mr. Glenn. Then, suddenly and without warning, Officer Van Blokland, who has also responded and entered the home, inappropriately used force on Ms. McKinney, when he slammed her against the wall and handcuffed her, causing injuries to her finger, chest wall and back. The officers completed their search of the house, including the second floor, and found no evidence that a crime had been committed or that anyone was in need of emergency assistance. The officers then arrested Mr. Glenn and took him to the NE Precinct in his underwear, bathrobe and house slippers.

7.

Mr. Glenn was cited and charged with interfering with a peace officer – ORS 162.247 and obstructing governmental administration – ORS 162.235 because he did not consent to the warrantless search of his house by Portland Police officers. Mr. Glen pled "Not Guilty" and went to trial on November 17, 2008. Mr. Glenn was acquitted of all charges in

1 Multnomah County Circuit Court, Case No. 0808-50599. The court ruled that the officers'
2 search of Mr. Glenn's home was warrantless, was without consent and unconstitutional.

3 8.

4 Plaintiffs provided official tort claims notice to the City of Portland less than 180
5 days after the subject incident.

6 For his FIRST CLAIM FOR RELIEF against defendant City of Portland, plaintiff
7 Thomas Glenn alleges as follows:

9 **NEGLIGENCE**

10 9.

11 Plaintiff Thomas Glenn re-alleges paragraphs 1-8 as if fully set forth herein.

12 10.

13 The occurrence of this event was a result of the negligence of defendant City of
14 Portland in the following particulars:

- 15 a. Failing to administer timely and appropriate Portland Police Bureau officer
16 training with respect to warrantless searches and justification for use of force;
17 b. Allowing Portland Police Bureau officers to perform warrantless home searches
18 without probable cause and consent of the homes residents;
19 c. Failing to adequately assess and ensure that Portland Police Bureau officers
20 maintain sufficient competency to perform their duties.

21 11.

22 The City of Portland, through the actions and omissions of officers Matthews,
23 Jackson and the other responding officers of the Portland Police Bureau, was negligent in one
24 or more of the following particulars:

- 25 a. By unlawfully entering plaintiffs' home without a search warrant, plaintiffs'
26 consent, or exigent circumstances;

- b. By throwing plaintiff Thomas Glenn from stair steps onto the ground floor without justification;
- c. By using excessive force on plaintiff Thomas Glenn;
- d. By failing to leave the premises after officers determined the occupants were safe;
- e. By refusing to leave the premises when directed by plaintiff Thomas Glenn; and
- f. By arresting and imprisoning Thomas Glenn without probable cause.

12.

As a result of the negligence of the defendant, and as a substantial factor and legal cause thereof, plaintiff Thomas Glenn suffered the following injuries:

- a. Right foot dislocation of the first, second and third tarsometatarsal joints;
- b. Intercuneiform instability in the right foot;
- c. Deep peroneal nerve traction injury in the right foot;
- d. Sprained right foot; and
- e. Right elbow contusion.

13.

Plaintiff's injuries have caused him to suffer the following symptoms and conditions:

- a. Right foot pain and swelling;
- b. Decreased right foot range of motion, mobility and traction neuritis;
- c. Right foot stiffness;
- d. Right elbow pain and bruising;
- e. Headaches;
- f. Insomnia; and
- g. Increased risk of susceptibility to right foot joint arthritis.

///

1 14.

2 As a result of said personal injuries, Thomas Glenn has incurred approximately
3 \$67,240.48 in medical expenses and will incur future medical expenses, will need future
4 medical treatment and will incur future care costs in an amount to be determined at trial.
5

6 15.

7 The injuries sustained by plaintiff are permanent. Plaintiff's injuries have been
8 painful and will continue to be painful in the future. They have interfered with and will
9 continue to interfere with his normal and usual activities. For the above injuries, the plaintiff
10 should be awarded non-economic damages in an amount which a jury decides is fair, but not
11 to exceed \$350,000.00.
12

13 16.

14 As a result of the injuries he sustained, the plaintiff has lost past wages of
15 approximately \$40,320, the exact amount to be determined at trial. Plaintiff continues to lose
16 wages of approximately \$480 per week, and plaintiff will incur damages for future impaired
17 earning capacity, the exact amount to be determined at trial.

18 For his SECOND CLAIM FOR RELIEF against defendant City of Portland, plaintiff
19 Thomas Glenn alleges as follows:
20

21 **BATTERY**

22 **(Excessive Force)**

23 17.

24 Plaintiff Thomas Glenn re-alleges paragraphs 1-8 as if fully set forth herein.

25 ///

26 ///

1 18.

2 Defendant City of Portland, through the actions of officer Matthews, intended to
3 cause and did cause offensive contact with Thomas Glenn and used excessive force by
4 grabbing him, throwing him from stairs to the ground below, driving knees into his back, and
5 handcuffing him.
6

7 19.

8 Officer Matthews' conduct was intentional, nonconsensual, offensive, harmful,
9 insulting and not justified.
10

11 20.

12 As a result of Officer Matthews' battery and excessive force, Thomas Glenn suffered
13 personal injury consisting of the injuries alleged in paragraph 12(a)-(e).
14

15 21.

16 Plaintiff re-alleges paragraphs 13-16.

17 For his THIRD CLAIM FOR RELIEF against defendant City of Portland, plaintiff
18 Thomas Glenn alleges as follows:

19 **FALSE ARREST**

20 **Count I**

21 22.

22 Plaintiff Thomas Glenn re-alleges paragraphs 1-8 as if fully set forth herein.
23

24 23.

25 Defendant City of Portland, through the conduct of the Portland Police Bureau
26 officers, intended to confine and did confine Thomas Glenn by arresting him for interfering
with a peace officer and obstructing governmental administration and transporting him to the

1 NE Portland precinct jail.

2 24.

3 Mr. Glenn was made aware of his confinement when he was physically taken to the
4 ground by officer Matthews, placed in handcuffs, and told by officers he was under arrest.

5 25.

6 The arrest and confinement of Mr. Glenn was unlawful because the officers did not
7 have a factual basis to establish a probable cause to enter into Mr. Glenn's house and
8 thereafter to arrest Mr. Glenn.

9 26.

10 As a result of the Portland Police Bureau officers' false arrest of Mr. Glenn, Thomas
11 Glenn suffered personal injury consisting of the injuries alleged in paragraph 12(a)-(e).

12 27.

13 Plaintiff re-alleges paragraphs 13-16.

14 **FALSE IMPRISONMENT**

15 **COUNT II**

16 28.

17 Plaintiff Thomas Glenn re-alleges paragraphs 1-8 as if fully set forth herein.

18 29.

19 Defendant City of Portland, through the conduct of the Portland Police Bureau
20 officers, continued to confine and did confine Thomas Glenn by further detaining him at the
21 NE Portland precinct jail for interfering with a peace officer and obstructing governmental
22 administration.

23 ///

1 30.

2 Mr. Glenn was made aware of his continued confinement when Portland Police
3 Bureau officers refused to release him and issued him a citation for interfering with a peace
4 officer and obstructing governmental administration.

5 31.

6 The confinement of Mr. Glenn was unlawful because the officers did not have a
7 factual basis to form probable cause and detain Mr. Glenn.

8 32.

9 As a result of the Portland Police Bureau officers' false imprisonment of Mr. Glenn,
10 Thomas Glenn suffered stress, humiliation, anxiety, physical pain, embarrassment
11 inconvenience and loss of enjoyment of life. For the above injuries, the plaintiff should be
12 awarded non-economic damages in an amount which a jury decides is fair, but not to exceed
13 \$100,000.00.

14 For his FOURTH CLAIM FOR RELIEF against defendant City of Portland, plaintiff
15 Thomas Glenn alleges as follows:

16 **TRESPASS**

17 **(Unlawful Entry)**

18 33.

19 Plaintiff re-allege paragraphs 1-8 as if full set forth herein.

20 34.

21 The defendant's intrusion, through the conduct of the Portland Police Bureau officers,
22 onto plaintiff Thomas Glenn's property and into his home was not authorized by plaintiff,
23 was without a search warrant and probable cause, was intentional, and invaded and denied
24

1 plaintiff's interest in the exclusive possession of his property. Defendant's entry onto
2 plaintiff's property was unlawful and in violation of plaintiff's Fourth Amendment rights and
3 under Article I, Section 9 of the Oregon Constitution, causing plaintiff economic damages as
4 alleged in paragraphs 14 and 16.

5
6 35.

7 Defendant's trespass has caused plaintiff mental suffering, annoyance, inconvenience,
8 worry and alarm all to his non-economic damages in an amount which a jury decides is fair,
9 but not to exceed \$350,000.

10 For his FIFTH CLAIM FOR RELIEF against defendant City of Portland, plaintiff
11 Thomas Glenn alleges as follows:

12 **Violation of the Fourth Amendment**

13 **(42 U.S.C. § 1983)**

14
15 36.

16 Plaintiff re-alleges paragraphs 1-8 as if fully set forth herein.

17 37.

18 Defendant City of Portland violated plaintiff's right to be free from unreasonable
19 search and seizure under the Fourth Amendment by authorizing and/or causing Portland
20 Police Bureau officers to enter into plaintiff's home without a warrant and without probable
21 cause under its policy relating to emergency entries and the community caretaking statute.

22
23 38.

24 Defendant City of Portland's policy regarding emergency entries and the community
25 caretaking statute, which permits Portland Police Bureau officers entry into citizen's homes
26

1 without a warrant, is unconstitutional on its face and/or the application of that policy by
2 defendant was unconstitutional.

3 39.

4 The defendant's unreasonable entry and search, through the conduct of the Portland
5 Police Bureau officers, onto plaintiff Thomas Glenn's property and into his home was not
6 authorized by plaintiff, was without a search warrant and probable cause, was intentional,
7 and invaded and denied plaintiff's interest in the right to be free from unreasonable search
8 and seizure. Defendant's entry onto plaintiff's property was unlawful and in violation of
9 plaintiff's Fourth Amendment rights, causing plaintiff economic damages as alleged in
10 paragraphs 14 and 16.
11

12 40.

13 Defendant's unreasonable entry, search and seizure has caused plaintiff mental
14 suffering, annoyance, inconvenience, worry and alarm all to his non-economic damages in an
15 amount which a jury decides is fair, but not to exceed \$350,000.
16

17 41.

18 Plaintiff also seeks his attorney's fees and litigation expenses and costs against
19 defendant under 42 U.S.C. § 1988.
20

21 For her FIRST CLAIM FOR RELIEF against defendant City of Portland, plaintiff
22 Patsy McKinney alleges as follows:

23 **NEGLIGENCE**

24 42.

25 Plaintiff Patsy McKinney re-alleges paragraphs 1-8 as if fully set forth herein.

26 ///

1 43.

2 The occurrence of this event was a result of the negligence of defendant City of
3 Portland in the following particulars:

- 4 a. Failing to administer timely and appropriate Portland Police Bureau officer
5 training with respect to warrantless searches and justification for use of force;
6 b. Allowing Portland Police Bureau officers to perform warrantless home searches
7 without probable cause and consent of the homes residents;
8 c. Failing to adequately assess and ensure that Portland Police Bureau officers
9 maintain sufficient competency to perform their duties.

10 44.

11 The City of Portland, through the actions and omissions of officers Matthews,
12 Jackson, Van Blokland and the other responding officers of the Portland Police Bureau, was
13 negligent in one or more of the following particulars:

- 14 a. By unlawfully entering plaintiffs' home without a search warrant, plaintiffs'
15 consent, or exigent circumstances;
16 b. By slamming plaintiff Patsy McKinney against a wall without justification;
17 c. By using excessive force on plaintiff Patsy McKinney;
18 d. By failing to leave the premises after officers determined the occupants were safe;
19 e. By refusing to leave the premises when directed by plaintiff Thomas Glenn; and
20 f. By arresting Patsy McKinney without probable cause.

21 45.

22 As a result of the negligence of the defendant, and as a substantial factor and legal
23 cause thereof, plaintiff Patsy McKinney suffered the following injuries:

- 24 a. Acute cervical strain;
25 b. Left side hematoma of the scalp;
26

1 c. Chest wall strain and contusion; and

2 d. Sprained right middle finger.

3 46.

4 Plaintiff's injuries have caused her to suffer the following symptoms and conditions:

5 a. Neck & head pain;

6 b. Chest pain;

7 c. Pain in the right middle finger

8 d. Decreased range of motion and mobility in the right middle finger; and

9 e. Headaches.

10 47.

11 As a result of said personal injuries, Patsy McKinney has incurred approximately
12 \$418.16 in medical expenses.

13 48.

14 Plaintiff's injuries have been painful and they have interfered with her normal and
15 usual activities. For the above injuries, the plaintiff should be awarded non-economic
16 damages in an amount which a jury decides is fair, but not to exceed \$125,000.00.

17 For her SECOND CLAIM FOR RELIEF against defendant City of Portland, plaintiff
18 Patsy McKinney alleges as follows:

19 **BATTERY**

20 **(Excessive Force)**

21 49.

22 Plaintiff Patsy McKinney re-alleges paragraphs 1-8 as if fully set forth herein.

23 ///

1 50.

2 Defendant City of Portland, through the actions of Officer Van Blokland, intended to
3 cause and did cause offensive contact with Patsy McKinney and used excessive force by
4 grabbing her, slamming her chest and face against a wall, and handcuffing her.
5

6 51.

7 Officer Van Blokland's conduct was intentional, nonconsensual, offensive, harmful,
8 insulting and not justified.

9 52.

10 As a result of Officer Van Blokland's battery and excessive force, Patsy McKinney
11 suffered personal injury consisting of the injuries alleged in paragraph 45(a)-(d).
12

13 53.

14 Plaintiff re-alleges paragraphs 46-48.

15 For her THIRD CLAIM FOR RELIEF against defendant City of Portland, plaintiff
16 Patsy McKinney alleges as follows:

17 **FALSE ARREST**

18 54.

19 Plaintiff Patsy McKinney re-alleges paragraphs 1-8 as if fully set forth herein.
20

21 55.

22 Defendant City of Portland, through the conduct of the Portland Police Bureau
23 officers, intended to confine and did confine Patsy McKinney by physically restraining and
24 handcuffing her in her home.

25 ///

26 ///

1 56.

2 Ms. McKinney was made aware of her confinement when she was physically pushed
3 into a wall by Officer Van Blokland and placed in handcuffs.

4 57.

5 The arrest and confinement of Ms. McKinney was unlawful because the officers did
6 not have a factual basis to establish a probable cause to enter into Ms. McKinney's house and
7 thereafter to arrest Ms. McKinney.
8

9 58.

10 As a result of the Portland Police Bureau officers' false arrest of Ms. McKinney,
11 Patsy McKinney suffered personal injury consisting of the injuries alleged in paragraph
12 45(a)-(d).
13

14 59.

15 Plaintiff re-alleges paragraphs 46-48.

16 For her FOURTH CLAIM FOR RELIEF against defendant City of Portland, plaintiff
17 Patsy McKinney alleges as follows:

18 **TRESPASS**

19 **(Unlawful Entry)**

20 60.

21 Plaintiff re-allege paragraphs 1-8 as if full set forth herein.
22

23 61.

24 The defendant's intrusion, through the conduct of the Portland Police Bureau officers,
25 onto plaintiff Patsy McKinney's property and into her home was not authorized by plaintiff,
26 was without a search warrant and probable cause, was intentional, and invaded and denied

1 plaintiff's interest in the exclusive possession of her property. Defendant's entry onto
2 plaintiff's property was unlawful and in violation of plaintiff's Fourth Amendment rights and
3 under Article I, Section 9 of the Oregon Constitution, causing plaintiff economic damages as
4 alleged in paragraph 47.

5
6 62.

7 Defendant's trespass has caused plaintiff mental suffering, annoyance, inconvenience,
8 worry and alarm all to her non-economic damages in an amount which a jury decides is fair,
9 but not to exceed \$125,000.

10 For her FIFTH CLAIM FOR RELIEF against defendant City of Portland, plaintiff
11 Patsy McKinney alleges as follows:

12 **Violation of the Fourth Amendment - 42 U.S.C. § 1983**

13 **(Unreasonable Search and Seizure)**

14
15 63.

16 Plaintiff re-alleges paragraphs 1-8 as if fully set forth herein.

17 64.

18 Defendant City of Portland violated plaintiff's right to be free from unreasonable
19 search and seizure under the Fourth Amendment by authorizing and/or causing Portland
20 Police Bureau officers to enter into plaintiff's home without a warrant and without probable
21 cause under its policy relating to emergency entries and the community caretaking statute.

22
23 65.

24 Defendant City of Portland's policy regarding emergency entries and the community
25 caretaking statute, which permits Portland Police Bureau officers entry into citizen's homes
26

1 without a warrant, is unconstitutional on its face and/or the application of that policy by
2 defendant was unconstitutional.

3 66.

4 The defendant's unreasonable entry and search, through the conduct of the Portland
5 Police Bureau officers, onto plaintiff Patsy McKinney's property and into her home was not
6 authorized by plaintiff, was without a search warrant and probable cause, was intentional,
7 and invaded and denied plaintiff's interest in the right to be free from unreasonable search
8 and seizure. Defendant's entry onto plaintiff's property was unlawful and in violation of
9 plaintiff's Fourth Amendment rights, causing plaintiff economic damages as alleged in
10 paragraphs 47.

11 67.

12 Defendant's unreasonable entry, search and seizure has caused plaintiff mental
13 suffering, annoyance, inconvenience, worry and alarm all to her non-economic damages in
14 an amount which a jury decides is fair, but not to exceed \$125,000.

15 68.

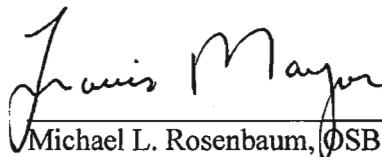
16 Plaintiff also seeks her attorney's fees and litigation expenses and costs against
17 defendant under 42 U.S.C. § 1988.

18 WHEREFORE, plaintiff Thomas Glenn prays for a judgment in his favor for non-
19 economic damages in an amount which a jury decides is fair, but not to exceed \$350,000,
20 \$67,240.48 in past medical expenses, approximately \$40,320 in lost income, the exact
21 amount to be determined at trial, and future medical expenses and future impaired earning
22 capacity in an amount to be determined at trial, plus plaintiff's attorney's fees, litigation
23 expenses, costs and disbursements incurred herein.

1 WHEREFORE, plaintiff Patsy McKinney prays for a judgment in her favor for non-
2 economic damages in an amount which a jury decides is fair, but not to exceed \$125,000,
3 \$418.16 in past medical expenses, plus plaintiff's attorney's fees, litigation expenses, costs
4 and disbursements incurred herein.

5 DATED this 21 day of March, 2011.

6
7
8 LAW OFFICES OF MICHAEL L. ROSENBAUM

9 

10 Michael L. Rosenbaum, OSB No. 760267

11 Travis J. Mayor, OSB No. 053210

12 Of Attorneys for Plaintiffs Thomas Glenn and Patsy
McKinney

13 Trial Attorney: Michael L. Rosenbaum, OSB 76026
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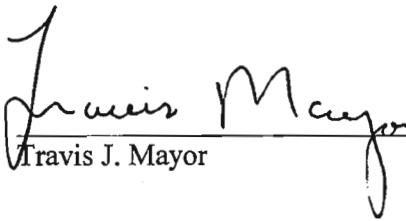
CERTIFICATE OF SERVICE

I hereby certify that I served, on the date set forth below, the foregoing FIRST AMENDED COMPLAINT and STIPULATION ALLOWING FIRST AMENDED COMPLAINT via the following method on:

William Manlove III
City Attorney's Office
1221 SW 4th Ave., Suite 430
Portland, OR 97204

By First Class Mail.

DATED this 21st day of March, 2011.


Travis J. Mayor